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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,184	02/13/2004	Leonard Frenkil	24988-101	1942
33694	7590	02/23/2007	EXAMINER	
SIDLEY AUSTIN LLP ATTN: DC PATENT DOCKETING 1501 K STREET, N.W. WASHINGTON, DC 20005			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/23/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/777,184	FRENKIL, LEONARD
	<b>Examiner</b>	<b>Art Unit</b>
	Jerrold Johnson	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER; FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 December 2006.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-37 is/are pending in the application.  
4a) Of the above claim(s) 33 and 37 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-32 and 34-36 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 13 February 2004.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_ .

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Group 1, Figs. 1-3, in the reply filed on 08 August 2006 is acknowledged.

Claim 33 drawn to the spacer being cylindrically shaped (Fig. 7), and claim 37 drawn to the deformation (Figs. 5A and 5B) are hereby withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-19, 21-32 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Bost et al Us 5,908,245.

Bost discloses the sealable bag with the interlocking tongue and groove system as claimed. A blocking structure in the form of a tab-like spacer 25 is included with the pouch and is attached to the sections of the pouch near the unsectioned opening of the pouch. The tab-like spacer 25 is inherently *capable of placement in the unsectioned opening* as is set forth in claim 4 et al., and is inherently capable of *being inserted in the*

*unsectioned opening* as is set forth in claim 5 et al. The tab 25 of Bost meets all of the claim limitations setting forth the structure of the blocking structure and the position of the blocking structure on the pouch in that the blocking structure is a thin elongated tab-like spacer that is integrally formed with the pouch, and is thus attached ("functionally attached" as is also claimed) to one of the pouch sections at the unsectioned opening of the pouch. Regarding the spacer being removably attached, the spacer is inherently capable of being removably cut from the bag e.g. with a scissors.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bost et al. US 5,908,245 in view of Examiner Official Notice.

Bost discloses an integrally formed tongue and groove system, see col. 2 line 38 “...groove formed therein...”, but does not disclose the “affixing” of the tongue and groove system.

The Examiner takes Official Notice that the affixing of tongue and groove systems to bags/pouches is as common as integrally formed tongue and groove systems, to the extent that the two are art recognized equivalent structures: same function in the same way to achieve the same result.

Accordingly, it would be obvious to one of ordinary skill in the art to use an affixed tongue and groove system in the pouch of Bost in place of the integrally formed tongue and groove system if it is determined to be a better economic choice.

### ***Conclusion***

The following prior art is considered pertinent to applicant's disclosure: Miniea US 6,045,264 in col. 10, lines 12-16 describes the use or a spacer 44 as a blocking structure. The spacer “may comprise a stick, paper, or other device.” At least to the Examiner's current knowledge, there is no suggestion in *this* reference that the spacer suggested by Miniea could be attached or affixed to the bag. The disclosure of Miniea *appears* to be limited to blocking structures that are formed separately from the bag.

Koyanagi US 2002/0044702, also cited by the Applicant, discloses element 10 in Fig. 3. This element appears inherently capable of performing the task of a blocking structure.

Post US 2,789,609 discloses elements 25,34 that also appear inherently capable of performing the task of a blocking structure.

To the knowledge of the Examiner, neither Koyanagi US 2002/0044702 nor Post US 2,789,609 disclose the use of their aforementioned tabs as a blocking structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JDJ



Mickey Yu  
Supervisory Patent Examiner  
Group 3700